



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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FCC OVERRULES CALDWELL TELEVISION
ASSOCIATES LTD., (53 RR2d 1686 (1983))

October 4, 1985

By this Notice, the Commission overrules prospectively its decision in Caldwell Television Associates, Ltd., 53 RR 2d 1686 (1983), with respect to waivers of FCC filing deadlines.

As a result of the decision of the U.S. Court of Appeals (D.C. Circuit) in Green Country Mobilephone Inc. and South Texas Mobiliphone, Inc. v. FCC, ___ F2d ___ (Slip Op. No. 84-1226, decided June 21, 1985), the Commission has reviewed its decision in Caldwell concerning what was held to be a compelling circumstance sufficient to permit a waiver of a filing deadline for a broadcast applicant. Although FCC policy had always been to enforce cut-off rules and to allow waivers only in unusual and compelling circumstances, this policy has not always been strictly adhered to. The Caldwell decision is the most recent example on this issue. In light of the Green Country decision, the Commission, by this Notice, specifically overrules Caldwell. We note that this action is prospective only and does not affect any parties to Caldwell.

As a result of this action, the Commission will in the future adhere strictly to the standard that applicants seeking waiver of Commission application filing deadlines demonstrate unusual or compelling circumstances for their waiver requests. This standard will generally contemplate a showing that the untimely filing was caused by a calamity of a wide-spread nature that even the best of planning could not have avoided. Furthermore, it must be demonstrated that all reasonable steps were taken after the event which caused the delay to minimize or avoid further delay.

The Commission will consider clearly unforeseeable circumstances as grounds for waiver - such as a debilitating earthquake or a city-wide power outage which brings transportation to a halt. The Commission will no longer consider as unusual or compelling, however, requests for waiver based upon claims that copying machines, delivery services or even, in most cases, inclement weather or illness, was responsible for the tardy filing. Although these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays. In other words, in the future, applicants who

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wait until the eleventh hour to meet Commission deadlines will be held to assume the risk for almost all events which may occur to prevent timely filing. To minimize the risk, applicants should build into their schedules a reasonable margin of error in anticipation of circumstances which may cause delay. Furthermore, as noted previously, applicants seeking waiver must also demonstrate that all reasonable steps have been taken to minimize any delay caused by the unforeseeable events. This strict interpretation of Commission requirements is necessary in order to assure that all applicants are treated fairly and reasonably in their dealing with Commission processes and to guarantee that there is an identifiable point in time when the Commission can close the door to new applicants, thus assuring that the Commission can effectively and efficiently fulfill its public interest mandate.

Action by the Commission October 2, 1985. Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

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